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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
AYRES, TIMOTHY MICHAEL	

ART UNIT	PAPER NUMBER
3637	

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/712,756	MATTHEWS ET AL.	
	Examiner	Art Unit	
	Timothy M. Ayres	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-36* is/are pending in the application.

4a) Of the above claim(s) *10,11,19-21 and 32-34* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9,12-18, 22-31,35, and 36* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *05 April 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *3/4/04,3/15/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

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DETAILED ACTION

This is a first office action on the merits of application SN 10/712,756.

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

a. Species 1, figures 1-17

b. Species 2, figure 18-20

c. Species 3, figure 21-22

d. Species 4, figure 23-26

e. Species 5, figure 27-29

f. Species 6, figure 30

g. Species 7, figure 31

h. Species 8, figure 32

i. Species 9, figure 33

j. Species 10, figure 34

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-6 and 22-26 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim

is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Timothy Martin on 8/18/05 a provisional election was made with traverse to prosecute the invention of species 1, claims 1-9,12-18, 22-31, 35, and 36. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10,11,19-21, and 32-34 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

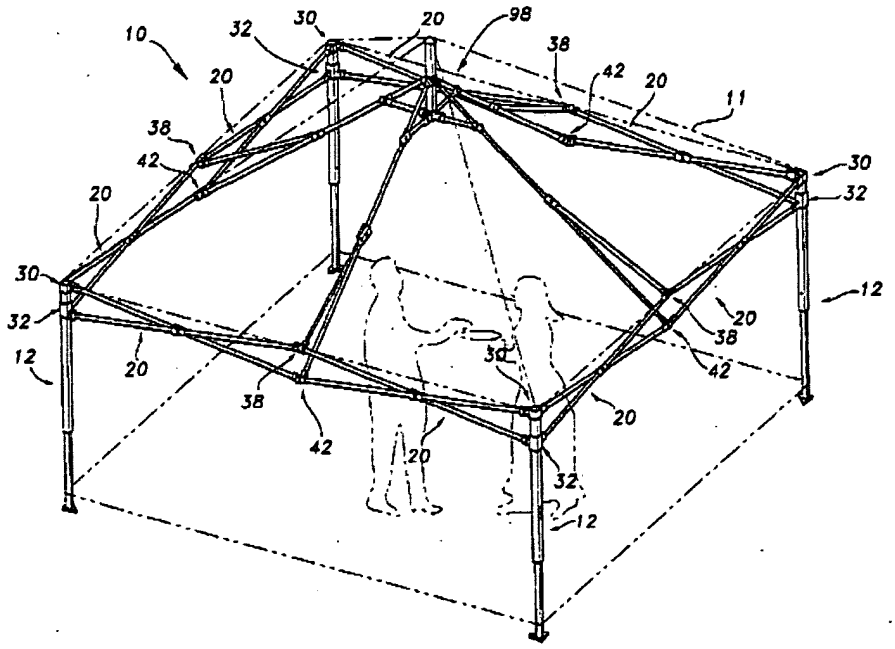
Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

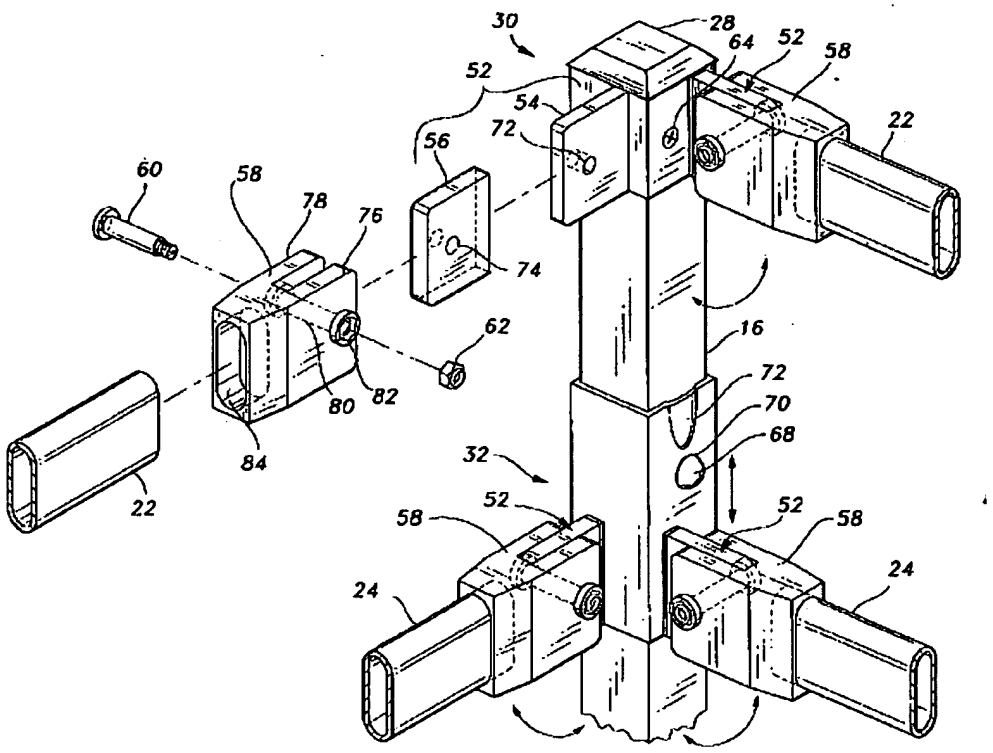
5. Claims 1-6,15,17,18,22-26,30, 35, and 36 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by U.S. Patent Publication 2004/0084074 to Chiu. Chiu '074 discloses an expandable framework (10) adapted to move between an expanded state for supporting a canopy covering (11) above a support surface as seen in figure 1 and a collapsed sate for storage as seen in figure 9. The expandable framework has a plurality of upright support members (12) each having a bottom end portion (14) positionable on the support surface and a top end portion (16) opposite the bottom end (14). The support members (12) being oriented alongside one another in the collapsed state and spaced apart from one another when in the expanded state. Upper mounts (30) and lower mounts (32) are disposed on each corner support member (12), at least some of the upper (30) and lower (32) mounts including a lobe (54) having outwardly facing, spaced-apart and substantially parallel sidewalls as best seen in figure 3. A

plurality of edge scissor assemblies (20,20) with there being an edge scissor assembly (20,20) interconnecting peripherally adjacent ones of the corner support member (12), each edge scissor assembly (20) including a pair of outer upper ends (24) and a pair of outer lower ends (22). The edge scissor assemblies (20,20) operative to open and close whereby the expandable framework my move between the expanded and collapsed states, at least some of the outer upper ends (24) and the outer lower ends (22) provided with a socket fitting (58) including spaced apart portions (78,76) that are spaced apart from one another to define a channel opening there between that is adapted to mateably engage a respective the lobe in close-fitted engagement, and with at least one of the portions having a substantially flat face thereby to form sliding contact surface with the respective the lobe (54). A fastener (60) to secure each lobe (54) for pivotal movement in the respective the socket fitting (58).



Chiu '074 Figure 1

6. The socket fittings (58) each include first (76) and second (78) arm portions extending for a length and having substantially parallel opposed face portions defining the channel opening, the first (76) and second (78) arm portion adapted to receive the respective the lobe (54) there between with each of the face portions forming sliding contact surfaces with the respective the lobe (54).



Chiu Figure 3

7. A pair of upper (30) and lower (32) mounts are disposed on each of the upright support members (12), one of the pair being a stationary mount (30) and another of the pair being a slide mount (32) slideably secured to the upright support member (12) and

movable therealong between locations proximate to and remote from the stationary mount (30) when the respective the edge scissor assembly (20,20) opens and closes.

8. The upper mount (30) in each pair is the stationary mount (30).

9. A latch element (68) associated with each of the upright support members (12), the latch (68) operative to latch the respective slide mount (32) in the location proximate to the respective stationary mount (30).

10. A roof support assembly (98) supported above the support surface by the upright support members (12) when in the expanded state, the roof support assembly operative to support the canopy covering (11).

11. The roof support assembly (98) includes a plurality of roof support members (104) pivotally connected to one another at proximate ends (126) thereof to form an apex (100).

12. Regarding claims 15 and 30, the edge scissor assembly (20,20) includes a pair of scissor units (20) connected at upper (38) and lower (42) inner ends thereof in end-to-end relation.

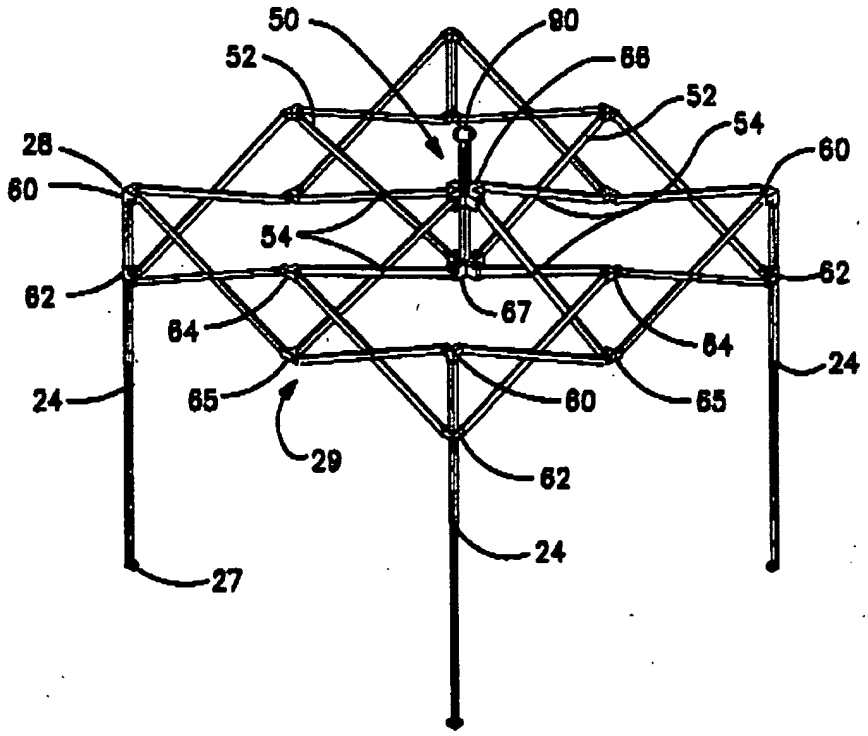
13. Regarding claims 17,18, and 35, the edge scissor assemblies (20,20) are constructed by at least one scissor unit (20), which includes a pair of scissor bars (22,24) pivotally connected to one another. The scissor bars (24,26) are tubular member having a cross-section selected from a group consisting of ovals, circles, squares and rectangles. In Chiu '074 an oval cross-section is disclosed as best seen in fig. 3, 7, and 8.

14. Regarding claim 36, At least one side panel is part of the canopy covering (11) is adapted to be supported by the framework (10) as shown and dot-dash lines in figure 1.

Claim Rejections - 35 USC § 103

15. Claims 1-9, 12-15,17,18, and 22-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,244,001 to Lynch in view of U.S. Patent 2,723,673 to Call. Lynch '001 discloses three embodiments corresponding to figures 2a, 2b, and 22a that include an expandable framework (11,21) adapted to move between an expanded state for supporting a canopy covering (12,22) above a support surface as seen in figure 1 and 2 and a collapsed sate for storage as seen in figure 17. The expandable framework has a plurality of upright support members (14,24,430) each having a bottom end portion (27) positionable on the support surface and a top end portion (18,28) opposite the bottom end (27). The support members (14,24) being oriented alongside one another in the collapsed state and spaced apart from one another when in the expanded state. Upper mounts (60,420) and lower mounts (62,422) are disposed on each corner support member (14,24,430). A plurality of edge scissor assemblies (19,29) with there being an edge scissor assembly (19,29) interconnecting peripherally adjacent ones of the corner support member (14,24,430), each edge scissor assembly (19,29) including a pair of outer upper ends (44,44') and a pair of outer lower ends (45,45'). The edge scissor assemblies (19,29) operative to open and close whereby the expandable framework may move between the expanded and collapsed states. Lynch '001 discloses the mounts (60,62) with a pair arm portions (116,118) that create a

channel opening (120). The two sides (121,122) have a substantially flat face to receive the scissor bars (41,42). The arm portions (116, 118) and the channel opening create a socket type fitting where the scissor bars (41, 42) fit between the two arm portions (116,118). A fastener (140) secures the ends of the scissor bars (41,42) to the arm portions (116,118) of the mounts for pivotal movement.



Lynch '001 Figure 2b

16. Regarding claims 6 and 22, a roof support assembly (50,400) supported above the support surface by the upright support members (24,430) when in the expanded state, the roof support assembly operative to support the canopy covering (22).

17. Regarding claims 3 and 24, a pair of upper (60,420) and lower (62,422) mounts are disposed on each of the upright support members (14,24,430), one of the pair being a stationary mount (60,420) and another of the pair being a slide mount (62,422) slideably secured to the upright support member (14,24,430) and movable therealong between locations proximate to and remote from the stationary mount (60,420) when the respective the edge scissor assembly (19,29) opens and closes.

18. Regarding claims 4 and 25, the upper mount (60,420) in each pair is the stationary mount (62,422).

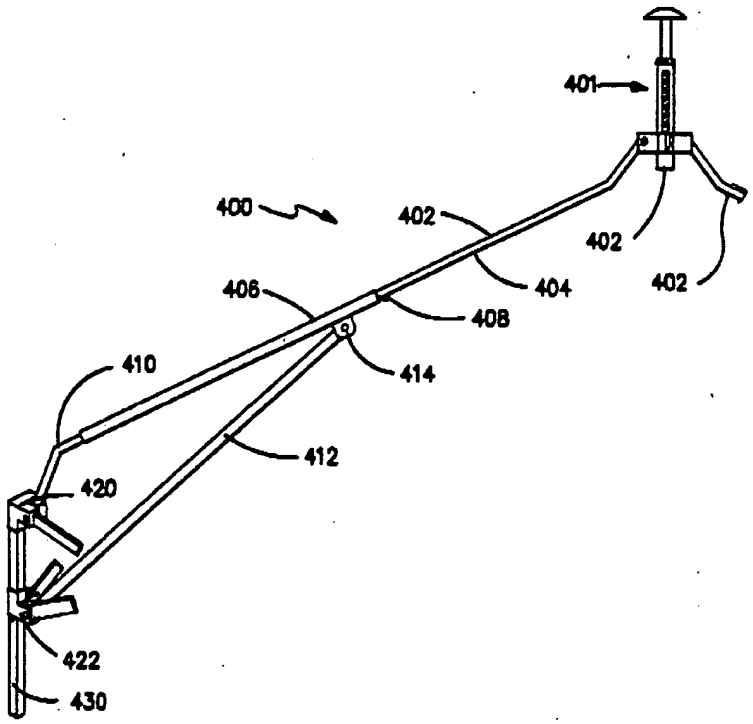
19. Regarding claims 5 and 26, a latch element (13) associated with each of the upright support members (14,24,430), the latch (13) operative to latch the respective slide mount (62,422) in the location proximate to the respective stationary mount (60,420).

20. Regarding claims 7 and 27, The roof support assembly (400) includes a plurality of roof support members (402) pivotally connected to one another at proximate ends thereof to form an apex (401) and extending generally radially outwardly from one another when in the expanded state, each roof support member pivotally connected at a distal end (410) thereof to one of the mounts (420,422) on a respective upright support member (430).

21. Regarding claims 8 and 28, the roof support members (402) includes a pair of extendable sections (404,406) movable between a retracted state when the framework structure is in the collapsed state and an extended state when the framework structure is in the expanded state.

22. Regarding claim 9, the roof support member includes a roof latch element (408) associated therewith operative to retain the extendable sections thereof in the extended state.

23. Regarding claim 13,the roof support member (402) includes a cantilever section (412) pivotally connected at a first cantilever end (414) to the roof support member and at a second cantilever end to the slide mount (422) on the respective upright support member (430).



Lynch '001 Figure 22a

24. Regarding claims 14 and 29,in the embodiment in figure 2b, the roof support assembly (50) includes at least one central scissor assembly (52).

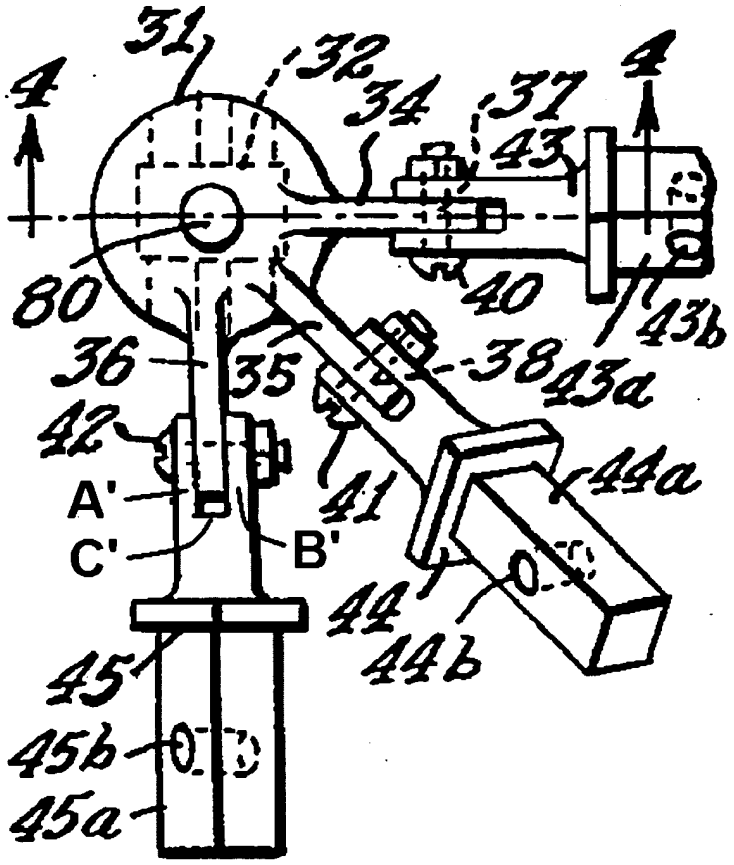
25. Regarding claims 15 and 30, the edge scissor assembly (29) includes a pair of scissor units (40) connected at upper (48) and lower (49) inner ends thereof in end-to-end relation as best shown in figure 4b.

26. Regarding claim 17, the edge scissor assemblies (29) are constructed by at least one scissor unit (40), which includes a pair of scissor bars (41,42) pivotally connected to one another.

27. Regarding claim 18, the scissor bars (41,42) are tubular member having a cross-section selected from a group consisting of ovals, circles, squares and rectangles. In lynch '001 the bars (41,42) are of a rectangular cross section as seen in figure 5.

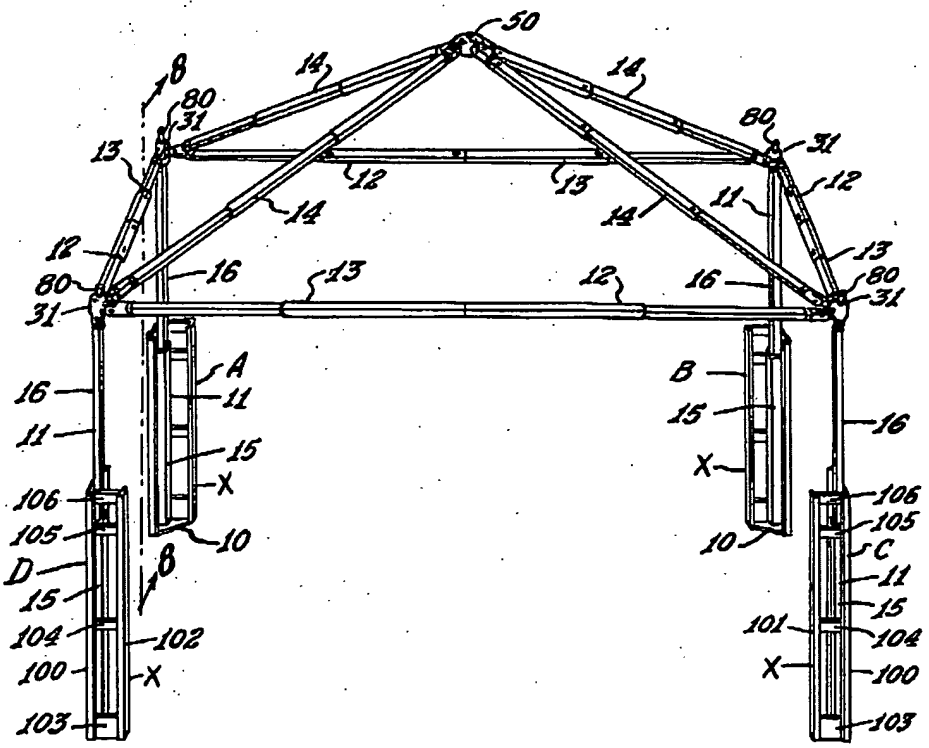
28. Lynch '001 does disclose a socket fitting on the mounts, but does not expressly disclose the reverse of a lobe on the mounts with a corresponding socket on the scissor bars. Lynch '001 does not also expressly discloses the roof support members being pivotally secured to an apex cap.

29. Call '673 discloses a framework to receive a canopy. Mounts (31) are attached to upright support members (16). The mounts (31) include three lobes (34,35,36) corresponding to three sockets (43,44,45) that connect to the support members (12,13,14). Using socket (45) and lobe (36) as an example for all, the socket fitting (45) includes a first (A') and second (B') arm portions extending for a length and having substantially parallel opposed face portions defining the channel opening (C'), the first (A') and second (B') arm portion adapted to receive the respective the lobe (36) there between with each of the face portions forming sliding contact surfaces with the respective the lobe (36).



Call '673 Figure 3

30. The roof support members (14) are pivotally secured to an apex cap (50).



Call '673 Figure 1

31. At the time of the invention it would have been obvious for a person of ordinary skill in the art to take the framework of Lynch and use the teaching of Call to reverse fittings and put the lobes on the mounts and a socket fitting on the scissor bars to make the structure more stable. Also, it would have been obvious to add the apex of Call to make the structure lighter since the apex structure would be one piece.

32. Claims 16,31,35, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,244,001 to Lynch in view of U.S. Patent 5,884,647 to Dwek. Lynch '001 discloses every element as applied to claims 1, 15, 22,and 30 above including center interconnecting fittings (64,66). Lynch '001 does not disclose expressly

a center fitting interconnecting with sockets on the corresponding scissor bars, the bars as ovals, and a side panel to be supported by the framework. Dwek '647 discloses a collapsible framework (16) with tubular bars (20) in shape of an oval. Attached on the end of the bars is a socket fitting (34) which is connected to a center fitting (32). The sockets (34) have arms (36) that define a channel in the space between them that is to receive the center fitting (32). A side panel (70) is attached to the frame work (16). At the time of the invention it would have been obvious for a person of ordinary skill in the art to take the frame work of Lynch and use the center fitting, side wall, and tubular bars of Dwek since they make the structure simple and easy to use.

Conclusion

33. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 6,729,076 to Gale discloses a framework for an awning using a socket and lobe system. U.S. Patent 5,884,647 to Dwek discloses an folding framework structure that uses a lobe and socket method with center interconnecting fittings. U.S. Patent 5,794,640 to Jang discloses a collapsible framework with quick disconnect socket and lobe connections. U.S. Patent Publication 2003/0172966 to Dotterweich discloses a collapsible canopy structure with socket and lobe type connections. U.S. Patent 6,216,717 to Chen discloses a collapsible framework with an apex cap. U.S. Patent Publication 2002/0059948 to Carter discloses a canopy framework with the roof members attached to an apex cap.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-FRI 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TMA
8/26/05

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